E. I. du Pont de Nemours and Company, Incorporated *and* International Brotherhood of Electrical Workers, AFL–CIO, CFL *and* Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL. Cases 11–CA–13225, 11–CA–13416, 11–CA–13522, and 11–CA–13547

June 28, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND RAUDABAUGH

On July 5, 1990, Administrative Law Judge Richard L. Denison issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below, to amend his remedy,[2] and to adopt the recommended Order.

The judge found that the Respondent violated Section 8(a)(5) by unilaterally changing its method of administering the assignment of overtime. We agree. In particular, we reject the Respondent's contentions that the change did not represent a substantial and material change or that the change was lawful either because business necessity warranted unilateral action or because the parties had reached impasse before the change was implemented.

1. As set out in the judge's decision, from 1987 until after the Union's certification in two units of mechanics (control and general), that method provided that the employees in each unit select, on a volunteer and rotating basis, one employee to assign overtime. Each such employee worked 20 hours per week as an overtime administrator and the remainder of each week doing regular unit work. In July 1989 the Respondent removed the overtime administration work from the unit and reassigned that responsibility to a nonunit clerical employee. In making that change, the Respondent significantly changed the *nature* of the work that, on a rotating basis, unit employees performed for half of their workweek. Such a qualitative change establishes the substantial impact required to trigger the bargaining obligation, regardless of whether it is accompanied by any change in the number of regular or overtime hours worked. *Christopher Street Owners Corp.*, 294 NLRB 277 (1989), and *Greensboro News & Record*, 290 NLRB 219 (1988).

2. We also agree with the judge that there is no merit in the Respondent's contention that its unilateral change in overtime administration policy was required by business necessity. The Respondent claimed that the addition of 40 hours per week devoted to mechanical work within the units consisting of 123 employees would reduce the amount of overtime needed for the major equipment overhaul scheduled for August through October 1989. To establish a business necessity defense, however, it is not sufficient simply to show that a particular change would save a substantial amount of money or be more efficient; the employer must show that it was essential to make the change quickly, without regard to whether there was agreement or a bargaining impasse. Compare *Kohler Co.*, 292 NLRB 661 (1989) (defense rejected where, despite motivation by efficiency and cost savings, no evidence of emergency situation precluding bargaining over transfer of unit work outside of unit) with *Dilene Answering Service*, 257 NLRB 284, 285 at fn. 6 (1981) (defense established by a showing that change in holiday work schedules was needed to assure coverage of telephones during upcoming holiday weekend and that union had promised, but failed, to supply a timely response to proposal for change). Here the Respondent has not demonstrated, either through testimony or documentary evidence, even the amount of savings that would have been achieved through the change, let alone the necessity of acting unilaterally when it did.

3. We finally must determine whether the Respondent is correct in claiming that the parties had bargained to impasse at the time it acted. Only if impasse had been reached would the Respondent be free unilaterally to reassign that bargaining unit work to a nonunit employee.

The judge, in finding that impasse had not been reached, correctly applied the test set forth in *Taft Broadcasting Co.*, 163 NLRB 475 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968). That test sets forth a number of factors, of which the critical one here is the bargaining history. Here the parties had agreed on ground rules that made the overall state of the contract negotiations critical. Specifically, they had agreed that the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The union witnesses testified that the parties agreed to treat the matter of overtime administration as part of their general negotiations for a contract, rather than on an ad hoc basis. The judge credited these witnesses. Thus, the matter was subject to the parties' agreement that bargaining would not be fragmented. The Respondent's attempt to bargain and implement this matter separately was inconsistent with this agreement.

We correct two inadvertent errors of the judge, neither of which affects our decision. First, on May 16, 1989, steward Jack Huggins was not also serving as an overtime administrator. Second, nonunit employee Lizette McGiver began administering overtime for the control and general maintenance units on July 17, 1989.

[2] The sums, if any, owing to unit employees as a result of the Respondent's unlawful conduct shall be calculated in the manner prescribed in *Ogle Protection Services*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent would not engage in item by item bargaining and would respond to the Union with a complete counterproposal only *after* the Union had submitted its proposal on each issue it wished to raise. Although, as the Respondent asserts, the parties agreed during the course of contract bargaining to identify certain specific items as ''noncontractual'' (e.g., emergency loans necessitated by Hurricane Hugo) and to address them in an ad hoc fashion outside the overall contract bargaining, the Union never agreed that overtime administration would be one of these ad hoc subjects. In isolating the overtime administration issue and unilaterally implementing its new policy when it did, the Respondent acted prematurely under the bargaining ground rules. We thus agree with the judge that the Respondent was precluded from declaring an impasse. It had not adequately tested the Union's willingness to accept the overtime administration because it had short-circuited the process by which the Union might have been willing to modify its position on that subject. *Patrick & Co.*, 248 NLRB 390, 393 (1980), enfd. mem. 644 F.2d 889 (9th Cir. 1981); *Towne Plaza Hotel*, 258 NLRB 69, 78 (1981).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, E. I. Dupont de Nemours and Company, Incorporated, Florence, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Rosetta B. Lane, Esq., for the General Counsel.
Thomas L. Sager, Esq. (E. I. du Pont de Nemours and Company, Incorporated Legal Department), of Wilmington, Deleware, for the Respondent.
Davis Self, Business Manager for Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This case was heard in Florence, South Carolina, on December 21, 1989. The charge in Case 11–CA–13416 was filed by the Charging Party, Local 382, on July 17, 1989. The consolidated complaint, issued October 27, 1989, as subsequently amended, alleges that E. I. du Pont de Nemours and Company, Incorporated, the Respondent, violated Section 8(a)(5) and (1) of the Act by unilaterally changing the wages, hours, and working conditions of its employees in three separate bargaining units represented by the Charging Party.[1]

The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint, as amended. On the entire record in the case, including consideration of the briefs, and observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Based on the allegations of paragraphs 2, 3, 4, 5, 6, and 7 of the complaint, respectively, admitted in the answer, and record evidence of the Unions' participation in negotiations, I find that the Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Unions named in the caption of this decision are each labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES[2]

A. *Introduction*

The Respondent's Florence, South Carolina plant manufactures mylar polyester film, which is used to make video and audio cassette tapes. Five production lines are utilized in this process, each of which must be shut down every 30 months for a 35-day major overhaul performed by a team selected from the plant's total complement of 76 general and 47 control maintenance mechanics. Thus, when Respondent's production line No. 5 was closed down for a major overhaul, which lasted from August until October 1989, 23 general and 21 control maintenance mechanics were assigned to the task. In order to shorten the amount of downtime for line 5, these employees worked a 48-hour workweek and, in addition, as high as 30 percent overtime, including some forced overtime. During the overhaul period, overtime for these two groups of mechanics averaged about 19 percent.

The Charging Party is the Board-certified exclusive collective-bargaining representative for three separate units of employees at the Florence plant. Certification issued for the control maintenance mechanics unit on November 15, 1988, followed by the unit composed of general maintenance mechanics on February 21, 1989, and, finally, the powerhouse mechanics unit on March 13, 1989. Contract negotiations were conducted separately beginning with the control mechanics in January and February 1989, and commencing with the general mechanics and the power mechanics in July and August of that year.[3] Once all negotiations were underway, the subsequent sessions were scheduled in roundrobin fashion. From time to time, as the need arose, the Respondent and representatives of the Union (usually at the steward level) met away from the bargaining table to deal with problems which needed immediate attention. Although these matters frequently involved terms and conditions of employment, the parties both referred to them as ''non-contract'' items to

[1] Only the issues which are included in Case 11–CA–13416 are the subject of this proceeding since those issues included in Cases 11–CA–13225, 11–CA–13522, and 11–CA–13547 were disposed of prior to the opening of the hearing.

[2] The facts set forth are based on a composite of the credited aspects of the testimony of witnesses and the exhibits, and consideration of the logical consistency and inherent probability of the facts found. Although I may not, in the course of this decision, refer to all the evidence, it has been weighed and considered, and to the extent that testimony or other evidence not mentioned might appear to contradict the findings of fact, it has not been disregarded, but has been rejected as incredible, lacking in probative worth, surplusage, or irrelevant. In those instances where I may not have specifically detailed who I have credited, it is clear from the narrative who has been credited.

[3] Hereafter all dates are in 1989 unless otherwise specified.

distinguish them from matters discussed during formal contract bargaining sessions.

The Union's chief stewards were John F. Wenteler for the control unit, J. Huggins for the general mechanics, and W. Hinds, representing the power unit. These three employees also served in the capacity of subsidiary negotiators on the Union's contract bargaining teams for their respective units.

Formal negotiating sessions began with the control mechanics unit's meeting with management on March 15. At this first session the Company insisted that the ground rules for the negotiations follow a pattern which would permit the Company to listen to all of the Union's proposals for a complete contract, following which the Company would present its best offer for a complete contract. The Company refused to engage in-item-by item bargaining. The Union disagreed, but when management adhered to its position, the Union reluctantly stated that they would see ''how it went.'' According to the testimony of David W. Crawford, Respondent's industrial relations superintendent and chief spokesman in negotiations, thereafter the parties met two times per week for sessions of 2 hours in length, and once roundrobin bargaining began with each of the three units, they met with the control unit every third week. Crawford acknowledged that the Company made no counterproposals, but simply listened to the Union's proposals and responded with what he called ''management's current thinking,'' which was subject to change when the time arrived for the Company to make its complete best offer for a contract. Crawford conceded that the Union continued to protest the manner in which the Company was bargaining.

It is against this background that I now turn to consideration of the alleged violations specified in the complaint.

B. *The Alleged Unilateral Changes Reflected in Respondent's Revised Handbook Distributed to Employees on June 5 and 6*

Consistent with past practice, Respondent publishes an employee handbook which sets forth its policies and procedures. The handbook is distributed to each employee. In September or October 1988, Senior Personnel Specialist Terry W. Baldwin was assigned the task of preparing an up-dated version of the handbook, the last edition of which had been distributed to employees in 1984. By June 1989, the revised handbook was ready for publication. On June 6, John Wenteler, Class A control mechanic, and the Union's chief steward for the control unit, was summoned to C. R. Cradic's office where he found Industrial Relations Superintendent Crawford waiting for him along with J. Huggins, the Union's steward from the power unit. No one else was present. The two stewards were handed a copy of a company employee information bulletin (in evidence as G.C. Exh. 4) listing 13 changes in the 1984 handbook, which were contained in the 1989 revision already distributed to unrepresented employees earlier that day. Wenteler testified that he could not remember the Company ever mentioning in prior negotiating sessions that a revised handbook was about to be issued. No evidence in the record refers to prior notification. Crawford asked Wenteler and Huggins to read through the list of changes following which he asked them if they had any questions.[4]

That afternoon at previously scheduled contract negotiating sessions with the power unit at 1 p.m., and in a specially called session with the general maintenace unit at 2 p.m., Baldwin reviewed in detail, for the benefit of Self and other members of the Union's negotiating committee, the changes embodied in the new 1989 handbook. In his presentation Baldwin was careful to distinguish between changes made prior to and after the advent of the Union as bargaining agent for the three mechanics' units. The four changes litigated in this proceeding are as follows, based on uncontradicted testimony by Baldwin and Crawford.[5]

1. Respondent's policy to pay employees a premium when less than 16 hours elapsed between work schedule changes was altered in the late 1970s to pay the premium only when such scheduled changes occurred less than 12 hours apart. It is therefore clear that this change had been in effect long before the advent of the Union, and, simply, had not been previously published.

2. As reflected in Respondent's Exhibit 7, a bulletin called ''Items of Interest,'' dated February 23, 1989, Respondent changed its severe weather policy on March 10, 1988, to permit employees to utilize l-hour increments of their vacation time rather than lose pay in situations where severe weather hampered their reporting on time for work.

3. Page 39 of the 1984 handbook contained a clause under the paragraph headed ''Breaking Ties in Seniority,'' ''Exception to the Above,'' which stated that company service for recognized maintenance experience if hired directly into maintenance or power, might entitle one employee to be placed above another. Baldwin testified that this clause had been deleted, because it was no longer applicable and had not been used since the initial hiring at the plant in 1961. Under the Company's practices in place before union representation, new hires were always placed in class 1 or class 2 in the Company's operations organization, from which they then had the opportunity to work their way up into the maintenance or power groups. Baldwin further explained that since layoffs and recalls occur by company seniority, the deletion of this clause could not possibly affect existing unit employees.[6]

4. The final change in issue involves the Company's including a 6-month limitation period on the filing of grievances. This, Respondent admits, to be a new change published for the first time in the revised 1989 edition of the handbook.

Both Baldwin and Crawford testified, without contradiction, that following Baldwin's presentation of the changes reflected in the new handbook, Baldwin asked the Union's chief spokesman, Davis Self, if the Union had any questions. No questions were asked. At the end of the meeting Baldwin asked Self if he had any objection to the distribution of the

[4] Crawford testified that he could not recall meeting with Wenteler in Cradic's office on June 6. He also denied that he met with Wenteler at any time that day. Huggins did not testify. I am persuaded that the meeting took place as Wenteler described it. Wenteler also testified that he received a copy of the new 1989 handbook prior to the meeting in Cradic's office. In view of the detailed and credited testimony of Terry W. Baldwin concerning the distribution of the handbook on June 6, the only logical explanation for Wenteler's clearly erroneous testimony is that he had seen a copy of the handbook distributed earlier that morning to the unrepresented employees.

[5] Although the complaint lists a number of these changes as violations of Sec. 8(a)(1) and (5) of the Act, the parties entered into a stipulation at the outset of the hearing which had the effect of deleting from the complaint all but the four changes discussed in this decision.

[6] This testimony is undisputed.

handbook to the represented employees including the control mechanics. Self answered that he had no problem with the distribution of the handbook to any of the bargaining unit employees. Self raised no objection to the changes made by the Company or to the Company's explanations. His only remark was the observation that the Company's 6-month limitation period on the filing of grievances was ''very reasonable.'' Business Manager Self entered an appearance in this proceeding and sat beside counsel for General Counsel throughout the hearing. He did not take the stand to refute any of Respondent's testimony concerning these and other events. Therefore, under all the circumstances presented, I find and conclude that the four changes in issue in this proceeding either occurred before the Union became the exclusive representative of Respondent's employees, or, in the case of the 6-month limitation period, were specifically approved by the Union by reason of Self's remarks at the meetings on June 6. I therefore find that the Respondent has not violated Section 8(a)(1) and (5) of the Act as alleged in paragraph 24 of the complaint, as amended.

C. *The Alleged Unilateral Change in Respondent's Overtime Administration*

Beginning in 1987 and continuing through the time of the Union's certifications, the Company maintained an overtime policy for the control mechanics and general mechanics which provided that the mechanics themselves would administer the assignment of overtime by selecting one of their own as overtime administrator. Thereafter this person, a volunteer, utilized 20 hours per week of paid time in each of their two units administering the assignment of overtime. The overtime administration assignment was rotated. There is some evidence that the chore was not particularly popular among the mechanics. However, at the time of the change in question, as discussed below, Respondent did have volunteers ready for training for the next planned rotation of this work.

The first indication received by the Union that the Company desired to change the method by which overtime assignments were administered came on May 16 when Area Maintenance Superintendent Al Robinson raised the topic on the shop floor with the General Mechanics Overtime Administrator Jack Huggins. Huggins was also chief steward for the Union with respect to the general mechanics unit. Robinson said the Company was thinking about replacing the mechanics' overtime administrator with a clerk. However, Robinson did not discuss the Company's plans or reasons in detail at that time.

A control unit contract bargaining session was scheduled for May 31. One day, about a week before this meeting, John Wenteler was called away from work by his supervisor and told that he had a meeting with Sam Meggs, Control Maintenance Area Superintendent, and to go to Meggs' office. Only Meggs and Wenteler were present. Meggs raised the subject of the Company's desire to change the overtime administration system. Wenteler answered that he was not in a position to bargain this matter on behalf of the Union, that he felt that neither of them were so empowered, and that the matter should be discussed in the formal negotiations. Meggs noted that overtime administration was one of the Company's concerns, and the meeting ended. At the May 31 bargaining session with the control unit, Meggs noted that he and Wenteler had discussed the matter earlier, but that Wenteler had stated he was not in a position to bargain for the Union. At this meeting Baldwin, Robinson, and Crawford represented the Company, while Business Manager Davis Self and John Wenteler represented the Union. Meggs continued with an oral presentation of the Company's plan to give the overtime administration work to a nonunit clerical. The Union asked the Company to submit a formal written proposal on overtime administration. The Company agreed, and the parties agreed to discuss the matter further at the scheduled negotiating session with the general mechanics unit at 1 p.m. on June 13. They also agreed to follow that meeting with a previously unscheduled special negotiating meeting with the control unit to begin at 2 p.m.

At 1 p.m. on June 13, the Company's bargaining session with the general mechanics unit began. The Union was represented by Davis Self, and Jack Huggins and Leo Lynch as employee representatives.[7] Crawford and Robinson represented the Company. Robinson made a formal presentation of the Company's written proposal to shift the scheduling and recordkeeping for overtime from a mechanic administrator to a clerical. Robinson told the Union that the Company felt this work was a waste of a class A mechanic's time. He mentioned the approaching line 5 overhaul period, and management's need to keep overtime down during the overhaul by using all mechanics to perform actual mechanical work. The Union disagreed, stating that the mechanics knew the job requirements better and could administer overtime better than a clerical. They also noted, without disagreement, that there had been problems in the past with respect to overtime scheduling and recordkeeping, and that the present arrangement had worked well. The Union asked for time to consult with their membership about the matter at the membership meeting scheduled for the first week in July. The Company replied that they could not wait that long because they needed to have a clerical trained to free a mechanic for the overhaul, and that they felt a week was enough time for the Union to consult with their members. As the meeting ended, the Company announced that they planned to begin training a clerical to perform this work by the end of June.

At 2 p.m. that day the Company met in a bargaining session with the control unit. Self and Wenteler represented the Union. Meggs presented the same proposal Robinson had presented to the general mechanics unit an hour earlier. Self asked if management had previously told the mechanics about what they wanted to do, and Crawford said no. However, Wenteler spoke up, stating that he had been told about the matter, and that the control mechanics had taken a vote not to change the present procedure. The Union argued that in the past there had been ''all kinds of turmoil'' about the way overtime was conducted, and the result had been a management decision to have the mechanics administer their own overtime. They said that the mechanics could do a better job of overtime administration than a clerical employee, and that they wanted to keep the present system. Although the Company did not contest the Union's arguments, it responded, generally, that they did not think the Union had presented a strong case, and that they planned to begin training the cler-

[7] None of these persons testified.

ical employee and to implement the change by the end of June.

At a regularly scheduled control unit contract bargaining session with the Company on June 14, attended by Crawford, Cecil Gray, and Terry Baldwin for the Company, and Self and employee representatives Post and Wenteler for the Union, Self again stated that the Union did not agree to the Company's proposed overtime administration change. Nevertheless, the Company insisted that the Union had not shown sufficient reasons for rejecting their proposal, and that they were going ahead with implementation. On June 15, management began training Lizette McGiver, a technical secretary, to perform the overtime administration duties. That same day Robinson had a conversation with Huggins in Robinson's office. According to Robinson's uncontradicted testimony, he asked Huggins if the Union had any new input concerning the Company's proposal of June 13 concerning overtime administration. Robinson told Huggins that if he had nothing new to say, the Company was going to go ahead and implement their proposal. Huggins observed that if the Company was going to do that, it didn't make any sense to train the mechanics who had already volunteered to replace the previous mechanic administrators. Robinson said he agreed, and that plans to train the replacements would be discontinued. Huggins was one of those who had volunteered to serve as overtime administrator in the next rotation of that work. On June 17, McGiver began administering the overtime for the control and general maintenance units.

Respondent contends that its reassignment of the overtime administration work was justified by business necessity, and resulted in no significant adverse impact to the general and control mechanics. Respondent also argues that it bargained to impasse with the Union on this policy change. In my view, however, the Respondent's arguments are seriously flawed. Indeed, the Board has held that reclassification of a bargaining unit job to a nonunit position is a mandatory subject of bargaining provided the reclassification has an impact on bargaining unit work. The existence of such an impact is determined by an examination of the practical effect of the change. Since the Respondent inaugurated its policy of utilizing one daytime mechanic each from the control mechanics unit and from the general mechanics unit to schedule and record all overtime, these mechanics each have spent approximately 20 hours per week performing overtime administration duties. By changing this policy and moving the overtime administration work outside the bargaining unit, the Company added 40 hours per week of mechanical work performed during regular hours. Thus, Respondent's change in overtime administration had the impact of adding an additional 40 hours per week for the performance of mechanical work usually performed by other mechanics in the unit.

With respect to Respondent's contention that its change was justified by business necessity in order to reduce the amount of overtime needed for the line 5 major overhaul, I find this reasoning unpersuasive. The Respondent has five production lines, each of which must be overhauled every 30 months. Therefore, during the 2 years during which a mechanic from each of the units in question has been performing overtime administration duties, periodically, a number of major overhauls have taken place. Not only did Respondent find it unnecessary during that period of time to change the overtime policy to reduce overtime, there is evidence in the record that the assignment of the overtime administration to a general and a control mechanic was designed to eliminate, and did eliminate, problems which had previously arisen in overtime administration.

Finally, the Respondent's argument that it bargained to impasse with the Union over the overtime administration change does not withstand scrutiny. The Board has observed that the question of the existence of an impasse is a matter of judgment dependent on an analysis of the bargaining history of the parties, their good faith in negotiations, the importance of the issue in question, and a contemporaneous understanding of the parties as to the status of the negotiations. I conclude that the bargaining history and the state of the negotiations between the parties demonstrates that no impasse had been reached concerning the change in Respondent's overtime administration policy, which sought a removal of work from the bargaining units. Although, when Respondent first made its overtime policy change proposal at the bargaining table with the control mechanics on June 13, contract negotiations with the control mechanics unit had been proceeding since January, regular contract negotiations for the general mechanics had not even started. During the very first negotiating session with the control mechanics unit, Respondent stated flatly that they would not present any counterproposals to the Union's proposals. Respondent insisted that after the Union had made all of its proposals for an entire contract, the Company would then make one best offer for a complete contract. By taking this position, the Respondent precluded any opportunity for give and take and the trade-offs which the Board has frequently observed to be the essence of true collective bargaining. In this context I find it impossible to conclude that any true impasse has been reached, since the possibility that the Union might accept the Company's proposed change in return for some other item which the unit employees desired, has not been explored. Consequently the good-faith bargaining mandated by the Act has not occurred. I therefore find and conclude that the Respondent has violated Section 8(a)(1) and (5) of the Act by unilaterally implementing its overtime work administration proposal in the control and general mechanics units without engaging in good-faith bargaining with the Union concerning this change.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Unions are each labor organizations within the meaning of Section 2(5) of the Act.

3. The following constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(a) All class 8 control mechanics, including apprentices and trainees, within that classification in the maintenance department employed at Respondent's Florence, South Carolina plant; excluding all other production and maintenance employees, operations employees, technicians, specialists, planners, office clerical employees, guards, and supervisors as defined in the Act.

(b) All general maintenance mechanics, including trainees employed at Respondent's Florence, South Carolina plant; excluding all production employees, operators, control mechanics, technicians, specialists, planners, power plant em-

ployees, office clerical employees, guards and supervisors as defined in the Act.

(c) All power area operators in various classifications employed by Respondent at its Florence, South Carolina facility, but excluding all maintenance employees, production employees, operations employees, technicians, specialists, planners, office clerical employees, guards, and supervisors as defined in the Act.

4. At all times since November 15, 1988, Local Union 382 has been, and is, the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 3(a), with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. At all times since February 21, 1989, Local Union 382 has been, and is, the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 3(b), with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

6. At all times since March 13, 1989, Local Union 382 has been, and is, the exclusive collective-bargaining representative of the employees in the unit described above in paragraph 3(c), with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

7. By unilaterally changing its method of administering overtime without bargaining in good faith with the Union concerning that change, on or about June 17, 1989, the Respondent violated Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. The Respondent has not violated the Act in any respects other than those specifically found.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

Since I have found that the Respondent has unilaterally changed its overtime administration policy without good-faith bargaining with the Union as the exclusive representative of its employees in the control maintenance and general maintenance units, I shall order the Respondent to cease bargaining in bad faith and to bargain with the Union in good faith, on request, and, if an understanding is reached, embody such understanding in a signed agreement. This bargaining shall, on request, specifically include negotiations over any proposed change in the overtime administration policy for these units.

I shall also order the Respondent to rescind its implementation of its overtime administration policy change awarding that work to a clerical employee outside of the appropriate collective-bargaining units. The Respondent will also be ordered to give adequate advance notice to and, on request, bargain in good faith with the Union concerning any proposed future changes in the wages, hours, and working conditions of its bargaining unit employees.

In addition, the Respondent will be ordered to make whole its employees in the control maintenance and general maintenance bargaining units for loss of earnings they may have suffered as a result of Respondent's unilateral change in its overtime administration policy in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, the Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, E. I. Dupont de Nemours and Company, Incorporated, Florence, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL, by unilaterally changing its overtime administration policy by the assignment of overtime administration work to a clerical employee outside the appropriate collective-bargaining units set forth in paragraphs 3(a) and (b) of the section of this decision entitled ''Conclusions of Law.''

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL, as the exclusive collective-bargaining agent of the employees in the appropriate units set forth in paragraphs 3(a) and (b) of the section of this decision entitled ''Conclusions of Law,'' with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. This bargaining shall, on request, specifically include negotiations over the Respondent's unilateral reassignment of overtime administration work to a clerical employee outside the general maintenance and control maintenance bargaining units.

(b) Rescind the unilateral implementation of Respondent's reassignment of the overtime administration work to a clerical employee outside the control and general maintenance appropriate collective-bargaining units.

(c) Make whole Respondent's control maintenance and general maintenance bargaining units' employees for any loss of earnings they may have suffered as the result of Respondent's unilateral reassignment of the overtime administration work to a clerical employee outside those units, including interest, in the manner prescribed in the remedy section of this decision.

(d) Provide adequate advance notice to and, on request, bargain in good faith with the Union concerning any proposed future changes in the wages, hours, and working conditions of its bargaining unit employees.

(e) Preserve and, on request, make available to the Board and its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Post at the Respondent's Florence, South Carolina plant copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

(h) In accordance with paragraph 9 of the section of this decision entitled ''Conclusions of Law,'' the complaint is dismissed in all other respects.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL, as the exclusive collective-bargaining representative of our employees in the collective-bargaining units set forth immediately below, by unilaterally changing our overtime administration policy by reassigning overtime administration work to a clerical employee outside the appropriate collective-bargaining units, without affording the Union adequate notice and an opportunity to engage in good-faith bargaining concerning such change.

All class 8 control mechanics, including apprentices and trainees, within that classification in the maintenance department employed at Respondent's Florence, South Carolina, plant; excluding all other production and maintenance employees, operations employees, technicians, specialists, planners, office clerical employees, guards, and supervisors as defined in the Act.

All general maintenance mechanics, including trainees employed at Respondent's Florence, South Carolina, plant; excluding all production employees, operators, control mechanics, technicians, specialists, planners, power plant employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL rescind the change in our 1987 overtime administration policy which reassigned the overtime administration work for the control maintenance and general maintenance units to a clerical employee outside those bargaining units.

WE WILL make whole our control maintenance and general maintenance bargaining unit employees for any loss of earnings they may have suffered as a result of our unilateral reassignment of the overtime administration work, including interest.

WE WILL, on request, bargain in good faith with Local Union 382, International Brotherhood of Electrical Workers, AFL–CIO, CFL, as the exclusive representative of our employees in the appropriate collective-bargaining units with respect to wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. This bargaining shall, on request, include negotiations concerning any proposed change in our 1987 overtime administration policy, as described above.

WE WILL provide adequate advance notice to and, on request, bargain in good faith with the Union concerning any proposed future changes in the wages, hours, and working conditions of our bargaining unit employees.

E. I. DUPONT DE NEMOURS AND COMPANY, INCORPORATED